

Seismic Review of LNG facilities (NBSIR 84-2833, available from FERC staff) for facilities that would be located in zone 2, 3, or 4 of the Uniform Building Code Seismic Map of the United States.

[Order 603, 64 FR 26611, May 14, 1999, as amended by Order 603-A, 64 FR 54537, Oct. 7, 1999; Order 609, 64 FR 57392, Oct. 25, 1999; Order 699, 72 FR 45328, Aug. 14, 2007; Order 756, 77 FR 4895, Feb. 1, 2012]

**§ 380.13 Compliance with the Endangered Species Act.**

(a) *Definitions.* For purposes of this section:

(1) *Listed species and critical habitat* have the same meaning as provided in 50 CFR 402.02.

(2) *Project area* means any area subject to construction activities (for example, material storage sites, temporary work areas, and new access roads) necessary to install or abandon the facilities.

(b) *Procedures for informal consultation*—(1) *Designation of non-Federal representative.* The project sponsor is designated as the Commission's non-Federal representative for purposes of informal consultations with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) under the Endangered Species Act of 1973, as amended (ESA).

(2) *Consultation requirement.* (i) Prior to the filing of the environmental report specified in § 380.12, the project sponsor must contact the appropriate regional or field office of the FWS or the NMFS, or both if appropriate, to initiate informal consultations, unless it is proceeding pursuant to a blanket clearance issued by the FWS and/or NMFS which is less than 1 year old and the clearance does not specify more frequent consultation.

(ii) If a blanket clearance is more than 1 year old or less than 1 year old and specifies more frequent consultations, or if the project sponsor is not proceeding pursuant to a blanket clearance, the project sponsor must request a list of federally listed or proposed species and designated or proposed critical habitat that may be present in the project area, or provide the consulted agency with such a list for its concurrence.

(iii) The consulted agency will provide a species and critical habitat list or concur with the species list provided within 30 days of its receipt of the initial request. In the event that the consulted agency does not provide this information within this time period, the project sponsor may notify the Director of the Office of Energy Projects and continue with the remaining procedures of this section.

(3) *End of informal consultation.* (i) At any time during the informal consultations, the consulted agency may determine or confirm:

(A) That no listed or proposed species, or designated or proposed critical habitat, occurs in the project area; or

(B) That the project is not likely to adversely affect a listed species or critical habitat;

(ii) If the consulted agency provides the determination or confirmation described in paragraph (b)(3)(i) of this section, no further consultation is required.

(4) *Potential impact to proposed species.*

(i) If the consulted agency, pursuant to informal consultations, initially determines that any species proposed to be listed, or proposed critical habitat, occurs in the project area, the project sponsor must confer with the consulted agency on methods to avoid or reduce the potential impact.

(ii) The project sponsor shall include in its proposal, a discussion of any mitigating measures recommended through the consultation process.

(5) *Continued informal consultations for listed species.* (i) If the consulted agency initially determines, pursuant to the informal consultations, that a listed species or designated critical habitat may occur in the project area, the project sponsor must continue informal consultations with the consulted agency to determine if the proposed project may affect the species or designated critical habitat. These consultations may include discussions with experts (including experts provided by the consulted agency), habitat identification, field surveys, biological analyses, and the formulation of mitigation measures. If the provided information indicates that the project is not likely to adversely affect a listed species or critical habitat, the consulting agency will

provide a letter of concurrence which completes informal consultation.

(ii) The project sponsor must prepare a Biological Assessment unless the consulted agency indicates that the proposed project is not likely to adversely affect a specific listed species or its designated critical habitat. The Biological Assessment must contain the following information for each species contained in the consulted agency's species list:

(A) Life history and habitat requirements;

(B) Results of detailed surveys to determine if individuals, populations, or suitable, unoccupied habitat exists in the proposed project's area of effect;

(C) Potential impacts, both beneficial and negative, that could result from the construction and operation of the proposed project, or disturbance associated with the abandonment, if applicable; and

(D) Proposed mitigation that would eliminate or minimize these potential impacts.

(iii) All surveys must be conducted by qualified biologists and must use FWS and/or NMFS approved survey methodology. In addition, the Biological Assessment must include the following information:

(A) Name(s) and qualifications of person(s) conducting the survey;

(B) Survey methodology;

(C) Date of survey(s); and

(D) Detailed and site-specific identification of size and location of all areas surveyed.

(iv) The project sponsor must provide a draft Biological Assessment directly to the environmental staff of the Office of Energy Projects for review and comment and/or submission to the consulted agency. If the consulted agency fails to provide formal comments on the Biological Assessment to the project sponsor within 30 days of its receipt, as specified in 50 CFR 402.120, the project sponsor may notify the Director, OEP, and follow the procedures in paragraph (c) of this section.

(v) The consulted agency's comments on the Biological Assessment's determination must be filed with the Commission.

(c) *Notification to Director.* In the event that the consulted agency fails

to respond to requests by the project sponsor under paragraph (b) of this section, the project sponsor must notify the Director of the Office of Energy Projects. The notification must include all information, reports, letters, and other correspondence prepared pursuant to this section. The Director will determine whether:

(1) Additional informal consultation is required;

(2) Formal consultation must be initiated under paragraph (d) of this section; or

(3) Construction may proceed.

(d) *Procedures for formal consultation.*

(1) In the event that formal consultation is required pursuant to paragraphs (b)(5)(v) or (c)(2) of this section, the Commission staff will initiate formal consultation with the FWS and/or NMFS, as appropriate, and will request that the consulted agency designate a lead Regional Office, lead Field/District Office, and Project Manager, as necessary, to facilitate the formal consultation process. In addition, the Commission will designate a contact for formal consultation purposes.

(2) During formal consultation, the consulted agency, the Commission, and the project sponsor will coordinate and consult to determine potential impacts and mitigation which can be implemented to minimize impacts. The Commission and the consulted agency will schedule coordination meetings and/or field visits as necessary.

(3) The formal consultation period will last no longer than 90 days, unless the consulted agency, the Commission, and project sponsor mutually agree to an extension of this time period.

(4) The consulted agency will provide the Commission with a Biological Opinion on the proposed project, as specified in 50 CFR 402.14(e), within 45 days of the completion of formal consultation.

[Order 603, 64 FR 26617, May 14, 1999, as amended by Order 699, 72 FR 45328, Aug. 14, 2007]

#### **§ 380.14 Compliance with the National Historic Preservation Act.**

(a) Section 106 of the National Historic Preservation Act, as amended (16 U.S.C. 470(f)) (NHPA), requires the Commission to take into account the